

***Response to comments from Norella Huggins  
Hazardous Waste Management Commission  
Received by e-mail: 3-28-05***

*1. Ecological Risk Assessment, Checklist B. This change appears to be acceptable because, in the presumably rare event that Checklist B must be completed, the consultant is likely to have an engineer or other professional on staff to make the question 7 determination at, hopefully, little extra cost.*

**Response:** Appendix F, Ecological Risk Assessment, Level 1, Checklist B (next to last paragraph, first sentence) will be changed to read, "A professional opinion may be necessary to answer 7.a, 7.b, and Question 7."

*2. Land Use. I believe that the terms and provisions of the two guidances (petroleum storage tanks and all others) should generally be consistent. The tanks guidance uses the term "most likely future use" and gives objective criteria for the determination at page 6-2. The tanks guidance also uses the term "reasonably anticipated future use" at page 11-1 of its AUL policy. It would seem better to change the term "future use" to be consistent with the tanks guidance. I think the CERCLA cleanup guidance may also use the term "reasonably anticipated future use."*

**Response:** Several members of the Workgroup have requested that the Institutional Controls Subgroup be reconvened to more completely address issues related to institutional controls and long-term stewardship. The Subgroup has agreed to re-convene and plans to do so later this month. This issue will be discussed in the next meeting of the Institutional Controls Subgroup and is also on the list of topics to be discussed by the Workgroup on April 28, 2005.

*3. Section 11.5 Information and Tracking. Commenters are asked to offer opinions on the appropriate repository for site information. Since the Hazardous Waste Program intends to maintain all site information anyway, it would seem redundant and not worth the resources required to also have the Secretary of State's office or other office maintain the information as well.*

**Response:** Please see previous response. This issue will be discussed with the Institutional Controls Subgroup.

*4. Section 11. Some real estate and environmental attorneys commented last fall on the previous draft of Section 11 and some changes may have been made in response. In summary, their comments were:*

*The wording gives a negative impression and would benefit by being made friendlier to encourage use of the Voluntary Cleanup Program.*

*To help make property transferable and marketable, the guidance should help you deal with uncertainty, but this is ambiguous and not concrete enough.*

*Make the covenants shorter, with no recitals. It needs objectivity, not the current subjectivity in the wording.*

*There needs to be a safe harbor or liability limiting.*

*You don't want a clause that if you ever want to build, you have to ask permission. You want to just give notice and certify.*

*Make the liability non-recourse. Make the remedy come out of the land only.*

*Assume people will do what is right, rather than the opposite. The current covenant for the VCP reads like a consent decree. It feels like enforcement but it is supposed to be voluntary.*

**Response:** Please see previous response. This issue will be dealt with in the Institutional Controls Subgroup.